

SAMUEL WALDENBERG

IBLA 81-257

Decided November 10, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring the Fair Lady lode mining claim abandoned and void. M MC 51694.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work --

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claim located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, evidence of annual assessment work or a notice of intention to hold the mining claim or the mining claim shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

APPEARANCES: Samuel Waldenberg, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Samuel Waldenberg appeals from a December 5, 1980, decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Fair Lady lode mining claim abandoned and void under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976);

43 CFR 3833.2-1(a) and 3833.4. The claim was located in October 1974, and Waldenberg received his interest in the claim by warranty deed in February 1979.

Waldenberg filed a copy of the location notice for the Fair Lady mining claim with BLM on October 19, 1979, as required by FLPMA and 43 CFR 3833.1-2. However, Waldenberg failed to file either evidence of annual assessment work or a notice of intention to hold the claim on or before October 22, 1979. Accordingly, on December 5, 1980, BLM issued its decision declaring the claim abandoned and void for failure to file on or before October 22, 1979, evidence of annual assessment work or notice of intention to hold the claim in accordance with 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a).

[1] The aforementioned statute and regulations require that evidence of annual assessment work or a notice of intention to hold a mining claim be filed on or before October 22, 1979. Since BLM did not receive the evidence of annual assessment work on or before October 22, 1979, appellant's mining claim was conclusively deemed by statute to be abandoned and void. Virginia M. Johnson, 57 IBLA 392 (1981); Virgie Dowler, 57 IBLA 389 (1981); Phillip Cramer, 57 IBLA 386 (1981). This Board has no authority to excuse noncompliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant alleges that he submitted the 1979 evidence of annual assessment work in a timely fashion. However, the record contains no such document and does contain a slip indicating that a BLM clerk noted its absence on October 19, 1979, and unsuccessfully attempted to contact appellant by telephone five times on October 19 and 20, 1979, about his failure to file it.

The absence of the 1979 proof of labor in BLM's files raises the presumption that it was never received, since there is a legal presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties. Theresa Jibillian, 57 IBLA 354 (1981); John Walter Starks, 55 IBLA 266 (1981); Larson v. Utah, 50 IBLA 382 (1980). Accordingly, in the absence of a clear showing to the contrary, we must presume that, if appellant had filed this document with BLM, it would be properly noted in the record.

Appellant states that he thought he had complied with the requirements, but does admit to some possible confusion on his part. Appellant's uncertainty about what was required does not excuse his failure to meet the mandatory recordation requirements of FLPMA. All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations. Virgie Dowler, *supra*; L. M. Pern, 57 IBLA 339 (1981); George W. Vrable, 57 IBLA 330 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

